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the refusal of a remedy in the principal case. *Prince Albert* v. *Strange*, 2 De G. & Sm. 652. The general result has been that with various reasons and in varying ways relief has been given in the case of some outrages against privacy; but the existence of a special category of rights to privacy has not been clearly realized, or the limits precisely defined. *Dixon* v. *Holden*, L. R. 7 Eq. 488.

The principle upon which a right against an invasion of privacy depends appears from a simple analysis of rights. Even crudest common law protected the person from more than mere batteries: it considered assaults and insults trespasses as well. The essential element in the trespass was the invasion of the person against the person's will. As sensations grew more intense, that became an invasion of the person which a ruder age did not so consider. The redress for the invasion of privacy may then well be a modern phase of the protection given to the person since the ancient trespass. If this view be correct, any publication which invades the privacy of a private individual, or such privacy of a public individual as he had not forfeited by his position. is a *prima facie* injury without more damage.

MANDAMUS TO A GOVERNOR. — New York State has joined the ranks of those who deny that a State court can control the governor by mandamus. *People* v. *Morton*, 50 N. E. Rep. 791 (N. Y.). The governor of New York is *ex officio* one of the Trustees of Public Buildings. In this capacity he is bound under a State statute to give preference to discharged Union soldiers as servants in the Capitol buildings, and, moreover, not to remove them except upon proof of incompetency. The statute is stringent; it allows the soldier to enforce the rights thus conferred by mandamus. The relator in the principal case was a discharged Union soldier who ran the elevator in the New York Senate building until he was removed without cause. He thereupon applied for a mandamus to compei the trustees, among them the governor, to reinstate him. The Court of Appeals, however, with a single dissent, held that the mandamus against the governor could not be granted, and contented itself with a simple affirmation that the relator had been improperly removed, and was entitled to be reinstated.

Questions of this sort are what test the balance of our constitutional form of government. Some courts, following the *dictum* of Chief Justice Marshall, that it is not the office, but the character of the act to be performed, that turns the scale, while refusing to interfere with the executive in regard to acts which call for the exercise of his discretion, issue commands to a governor to do acts in regard to which he has no choice when once he has read the statutes and applied the rules to the facts before him. *Tennessee & Coosa R. R. Co.* v. *Moore*, 36 Ala. 380; *Marbury* v. *Madison*, 1 Cranch, 380. But is not this proceeding a farce? Without a resort ro the fiction invoked by Mr. Justice Haight in the principal case, that the governor is the successor of the king at common law, — which with all deference he is not, but rather an officer co-ordinate with the court, to both of whom separate functions are delegated by the sovereign people, — without the aid of that fiction, objections to this mandamus are revealed by a study of the theory of the Federal and State constitutions. Co-ordination and interdependence of the different branches of the government are the rule. Although the courts have the power of declaring what the law is, and so far seem to be above

the executive, who must apply the law, this superiority extends no farther. It is a concession necessary for the consistency of government. The judicial is really the weakest of the three departments, and depends upon the executive for its backbone. Deprived of this source of strength the court is powerless against any one, not to speak of the executive itself. Any disregard of a mandamus by the chief executive the court could not punish, and the result of issuing the mandamus could be only to bring the court into contempt. *The State* v. *The Governor*, 25 N. J. L. 331. This reason applies as fully to the governor of a State, within his own sphere, as to the President of the United States. Each in his way is supreme. It is idle, moreover, to draw distinctions between ministerial and discretionary acts. Every act involves a certain exercise of judgment, and the distinction can be only one of degree. The chief executive of any State in the matters intrusted to him is his own judge, and claims upon him for the performance of his official duty are beyond the cognizance of the courts of his State. If he ignores the law, impeachment, not mandamus, is the remedy.

THE RIGHTS OF UNBORN CHILDREN. — The question whether an unborn child has civil rights, — whether an infant may recover damages for injuries received before birth, — is a rare one in the law. It was squarely raised, and decided against the child, in *Dietrich* v. *Northampton*, 138 Mass. 14, and discussed in *Walker* v. *Gt. Northern Ry. Co.*, 28 L. R. (Ireland), 69. It has now been brought up again in *Allaire* v. *St. Luke's Hospital*, Appellate Court, First District of Illinois, 30 Chic. Leg. News, 333. There the plaintiff's mother was received by the defendants, a lying-in-hospital, for treatment during child-birth. The defendant's neglect, — which was clearly tortious as to the mother, — was the direct cause of an injury to the plaintiff while still in the womb. It is hard to imagine a case in which the facts would be more favorable to the child and more likely to prejudice a court, but it was held that the child could not recover for his injury.

The position of a child *en ventre sa mere* in the other departments of the law gives little sanction to a proposition for granting them civil rights. They are considered in the law of property, but their rights do not come into existence until birth and then relate back. This fiction of relation does not involve any idea of a child *en ventre sa mere* as a separate entity, and at best is a special equitable provision. The criminal law is harder to understand. It is murder or manslaughter if one injures a child *en ventre sa mere*, and that child be born alive, and later dies of the injury. 3 Inst. 50. *Rex* v. *Senior*, 1 Moo. C. C. 346. It is argued that every murder must of necessity be a tort, and that therefore there has been a tort against the child in the womb. The answer to this contention probably is that the criminal law has made an error, though a very natural one, in placing this crime against the child in the category of murder; that the fundamental conception of homicide is the application of some force to a human being, a member of society; that this crime properly belongs in the category with the offence of procuring an abortion. The cases that have called the crime murder or manslaughter have stated no reasons, and the suspicious principle clearly forms no sound basis for analogy.

And not only would it be without precedent in law to allow the child to recover damages for an injury sustained before birth, but it would create